

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
SOUTHERN DIVISION

COURTNEY RICHMOND and CHEF  
COURTNEY'S HOMEMADE BBQ SAUCE,

Plaintiffs,  
vs.

NOLAN WIESE; BACKYARD SPECIALTY  
FOODS; MARK FONDER; and THE BARREL  
HOUSE,

Defendants.

**4:21-CV-4073-LLP**

**ORDER DENYING PLAINTIFF'S  
MOTION TO APPOINT COUNSEL ON  
APPEAL**

On June 14, 2021, this Court, upon motion by Defendants, dismissed with prejudice Plaintiffs' claims against Defendants on the basis of res judicata and issued a judgment in favor of the Defendants and against Plaintiffs. (Docs. 30-31). On July 8, 2021, Plaintiffs filed a notice of appeal with the Eighth Circuit Court of Appeals and on July 30, were directed by the Court of Appeals to pay the filing fee or file a motion to proceed IFP. (Doc. 34).

On August 17, 2021, Plaintiffs filed a Motion to Proceed In Forma Pauperis which was granted by order of the Court. (Docs. 40, 42). On August 25, 2021, Plaintiffs filed a Motion to Appoint Counsel on Appeal. (Doc. 44). That motion is presently pending before the Court.

This Court cannot appoint counsel to litigants before the Eighth Circuit Court of Appeals unless the Court of Appeals requests or directs this court to rule on the matter. *Giese v. United States of America*, Civ. No. 4:18-4144-KES, Docket 53 (D.S.D. filed Dec. 19, 2019) (citing *Smith v. United States Marshals*, 2016 U.S. Dist. LEXIS 172573, at \*3 (D.S.D. Dec. 12, 2016)); *see also Bryant v. Britten*, Civ. No. 09-3167, 2010 WL 1292131 at \*1 (D. Neb. Mar. 30, 2010) (denying petitioner's motion to appoint counsel without prejudice to reassertion before the Eighth Circuit); *Olson v. City of Sartell*, Civ. No. 04-3429 at \*1 (D. Minn. Apr. 19, 2005) ("A request for counsel on appeal must be determined by the Court of Appeals.").

Accordingly, it is hereby ORDERED that Plaintiffs' Motion to Appoint Counsel on Appeal (Doc. 44) is DISMISSED without prejudice to its refiling with the Eighth Circuit Court of Appeals.

Dated this 31<sup>st</sup> day of August, 2021.

BY THE COURT:



Lawrence L. Piersol  
United States District Judge

ATTEST:  
MATTHEW W. THELEN, CLERK

